

Appeal from decision of Nevada State Office, Bureau of Land Management, declaring an unpatented mill site abandoned and void. N MC 49944.

Vacated and remanded.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mill site located after Oct. 21, 1976, must file a copy of the location notice with the Bureau of Land Management within 90 days after location. There is no statutory requirement that subsequent yearly notices of intention to hold the mill site be filed with BLM. The regulations, 43 CFR 3833.2-1(d), require that a notice of intention to hold the mill site claim be filed with BLM on or before Dec. 30 of the year following recordation of the mill site with BLM.

APPEARANCES: Eleanor A. Hill, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Eleanor A. Hill appeals the July 18, 1983, decision of the Nevada State Office, Bureau of Land Management (BLM), which declared the unpatented Faraway mill site claim, N MC 49944, abandoned and void because no notice of intention to hold the claim was filed with BLM for 1979, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976).

Appellant submitted with her appeal a copy of a proof of labor for 1979 for the Faraway lode mining claim, and the Faraway mill site claim, stamped as being received by BLM December 27, 1979.

The case file discloses that the notice of location for the Faraway mill site states the date of the relocation of claim was January 29, 1979. The notice was recorded the same day in Lyon County, Nevada. A copy of the notice was filed with BLM February 15, 1979.

[1] The regulation, 43 CFR 3833.2-1(d), provides that the owner of a mill site claim located on Federal lands shall file in the proper BLM office on or before December 30 of each year following the year of recordation with BLM a notice of intention to hold the mill site. There is no statutory requirement beyond filing a copy of the notice of location of a mill site with BLM within 90 days after location.

As the notice of location was filed for record with BLM February 15, 1979, there was no regulatory requirement for the owner of the mill site to file with BLM any other document relating to the mill site until 1980. But as the record shows, a proof of labor (notice of intention to hold) was submitted to BLM for the Faraway mill site claim on December 27, 1979.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is vacated and the case remanded to BLM for further appropriate action consistent with this opinion.

---

Douglas E. Henriques  
Administrative Judge

We concur:

---

Gail M. Frazier  
Administrative Judge

---

Will A. Irwin  
Administrative Judge

